REMARKS

Claims 1-29 remain in this application. Claims 1, 9, 14, and 20 are independent. Claims 1, 9, 14, and 20 are currently amended.

In the Office Action, the Examiner rejected claims 1-29 under 35 U.S.C. § 112, paragraph 2, as being indefinite. The Examiner rejected claims 1-29 under 35 U.S.C. 101 as being directed to non-statutory subject matter. Specifically, the Examiner rejected the method claims (1-13 and 22-25) do not positively recite a statutory class of invention, for example by identifying the apparatus that accomplishes the method steps. The Examiner rejected the system claims (14-21 and 26-29) for not incorporating hardware limitation. The Examiner also rejected claims 1-29 under 35 U.S.C. § 102(e) as anticipated by Kaminsky et al. (U.S. Patent No. 7,356,498).

Applicants thank the Examiner for conducting a telephonic interview on December 16, 2008. During the interview, Applicants' counsel and the Examiner discussed the amendments made herein to the claims and why they would overcome the Section 112 and Section 101 rejections. Applicants' counsel and the Examiner also discussed the Kaminsky reference and how the pending amended claims were patentably distinct from Kaminsky.

Rejections Under 35 U.S.C. §§ 101 and 112, Second Paragraph

Applicants have amended independent claims 1, 9, 14, and 20 to more clearly recite inventions described in the specification. The specification fully supports the amendments. (*See, e.g.*, Specification ¶ 0042.) The specification makes clear that the order router may be one or more network servers, a stand-alone computer, or any other machine comprising a processor.

Claims 1, 9, 14, and 20 as amended recite an order router comprises a processor. Thus, the system and method claims incorporate hardware limitations and are tied to another statutory class of invention. The claims also point out and distinctly claim subject matter that the Applicants regard as their invention. Applicants are not required to recite in their claims all aspects of what is described and supported in Fig. 1 of the specification. In view of the following amendments, remarks and the discussion during the interview, Applicants respectfully request reconsideration and withdrawal of the rejections under Sections 101 and 112, second paragraph.

Rejections Under 35 U.S.C. § 102(e) Based On Kaminsky

The present invention is directed to a system and method for processing trade orders essentially instantaneously and filling them with improvement (including price, size, and speed improvement) over the National Best Bid and Offer (NBBO) by internalizing certain trade orders. Internalizing trade orders refers to orders that a broker-dealer fills itself (acting as a principal) by trading on its own behalf with a customer who

has placed an order with the broker-dealer (acting as an agent).

Historically there have been concerns that broker-dealers could misuse customer order information when internalizing customer trade orders. For example, when broker-dealers (acting as agents) received customer orders before the market opened, it raised concerns that the broker-dealers (acting as a principals) could use that information to determine market direction and profit from their own order flow when they traded for their own accounts (as principals). The inventions described in the instant application employ novel methods and systems that enable orders to be internalized without raising concerns over misuse of customer information by ensuring that broker-dealers (acting as principals) are not provided with access to orders of customers of broker-dealers (acting as agents).

Kaminsky et al. addresses a completely different problem. It is directed to computer-based methods and systems for market-maker risk management. (*See, e.g.*, Abstract; Col. 1, l. 8-12.) More specifically, it is directed to employing automatic quote risk monitoring and modification in automated trading methods and systems. (*See, e.g.*, *id.*)

Generally, market-makers maintain firm bid and offer prices in a given security by standing ready to buy or sell round lots at publicly quoted prices. In open outcry trading, market-makers can manage their risk exposure by adjusting their quotes to favor trades that would tend to hedge away unwanted exposure. (*See, e.g.*, Col. 1, l. 43-55.) In an automated trading environment, the rapidity with which trade are made may cause the

market maker may exceed the market-maker's ability to adapt trading positions to avoid assuming unacceptable risk. (Col. 1, l. 56 – Col. 2, l. 5.) The computer system of Kaminsky et al. is intended to overcome the shortcomings of software tools that can analyze stock and option portfolios in real time by providing a method for automatically canceling, regenerating, or modifying market maker quotes under certain trading conditions. (*See, e.g.*, Col. 2, l. 6-35.)

The Kaminsky et al. system is implemented using at least one computer having a memory, a processor, and a communication port that is configured to receive orders and quotes, wherein specified quotes are part of a quote group that preferably contains all of tone or more market-makers' quotes for risk monitoring purposes. (*See, e.g.*, Col. 2, l. 39-54.) The computer generates trades by matching the received orders and quotes to previously received orders and quotes, and otherwise stores each of the received quotes if a trade is not generated. (*Id.* at Col. 2, l. 54-57.) The computer then determines whether a quote within the quote group has been filled, and if so, determines an aggregate risk level associated with the trade. (*Id.* at Col. 2, l. 57-61.) The computer then compares the aggregate risk level and aggregate risk level associated with a trade; compares the aggregate risk level with the market maker's risk threshold; and if the market maker's risk threshold is exceeded, the system automatically modifies at least one quote. (*Id.* at Col. 2, l. 61-64.) It may also regenerate quotes when new trades have occurred against previous quotes. (*Id.* at Col. 2, l. 64-65.)

But the Kaminsky et al. system does not address the problem of preventing broker-dealers from misusing customer trading information when internalizing trade orders. The Kaminsky et al. system does not teach, disclose, or suggest an order router as recited in Claim 14 that order router is configured to: a) receive trade orders; b) receive quotes from the algorithm engine that are generated without access to the trade orders; c) receive quotes from an NBBO feed; d) analyze quotes received from the algorithm engine and the NBBO feed; e) determine whether the trade order can be filled with improvement from the NBBO quotes by comparing the trade order to the NBBO and algorithm engine quotes; and f) transmit the trade order to one of i) a marketplace where the trade order can be filled with improvement from the NBBO quote or ii) a marketplace where the trade order can be filled at the NBBO quote.

Kaminsky et al does include references to including an NBBO (National Best Bid and Offer) quote service within its system (*see, e.g.*, Col. 7, l. 42-55; Col. 8, l. 32-42.) But the Kaminsky et al. does not disclose, teach, or suggest comparing a trade order to quotes generated by an algorithm engine that does not have access to the trade order and NBBO quotes to determine if the if the trade order can be filled by price, size, or speed improvement from the NBBO by having the trade filled with the quote from the algorithm engine as recited in Claim 14.

Independent claims 1, 9, and 20 (and the claims that depend on those claims) are patentably distinct from Magill for similar reasons. Claim 1 recites receiving a quote at the order router that is generated from an algorithm engine that does not have access to

the trade order and the order router selecting a marketplace for the trade order based on comparing the analyzed quotes to the trade order. Claim 9 recites receiving at the order router a quote from an algorithm engine that is generated without having access to the trade order and the order router determining whether the trade order can be filled with improvement from the NBBO quote based on comparing the algorithm engine and NBBO quotes to the trade order. Claim 20 recites that the order router is configured to a) receive and analyze trade orders, quotes received from an algorithm engine that does not have knowledge of the trade orders, and quotes received from a National Best Bid and Offer (NBBO) feed and b) determine whether the trade orders can be filled with improvement from the NBBO quotes based on comparing the trade order to the quotes from the algorithm engine and the NBBO feed.

The claims dependent on Claims 1, 9, 14, and 20 are patentably distinct from Kaminsky et al. for at least the same reasons discussed above, and for additional reasons. Kaminsky et al. also does not disclose, teach, or suggest limitations in the dependent claims. For example, Kaminsky et al. necessarily does not disclose, teach, or suggest that the improvement is size and speed improvement as recited in Claims 3, 10, and 15. It also necessarily does not teach, disclose, or suggest filling an order with improvement from the NBBO at a marketplace that is a reporting facility as recited in dependent Claims 4, 5, 11. Kaminsky et al. does not disclose, teach, or suggest, that the algorithm engine is programmed to quote a predetermined improvement from the NBBO as recited in dependent Claims 6,7, 8, 12, 13, 17, and 18. For similar reasons, Kaminsky et al. does

not disclose, teach, or suggest the limitations of dependent claims 22-29. Kaminsky et al. also does not disclose, teach, or suggest that the algorithm engine is programmed with information comprising proprietary trading strategies of a broker-dealer and characteristics of marketplaces that could affect price, size, and speed with which the trade order can be filled as recited in Claim 19.

Kaminsky et al. does use automatic quote generation as reflected in the portions of the specification of Kaminsky, et al. cited in the Office Action, but the automatic quote generation in Kaminsky et al. is performed and adjusted based on determinations of the market-maker's risk thresholds. Kaminsky et al. does not use an order router to determine whether a trade order can be filled with improvement from the NBBO quotes by comparing the trade order to NBBO quotes algorithm engine quotes that are generated without having access to trade orders.

CONCLUSION

In light of the foregoing amendments and remarks, Applicants believe that the application is in a proper format for allowance of all currently pending claims and earnestly solicit a notice to that effect.

Respectfully submitted,

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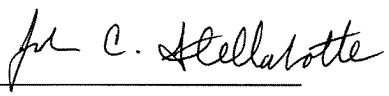
By 
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